

## HOUSE BILL NO. 659

INTRODUCED BY G. EVERETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING ACTIONS CHALLENGING PUBLIC SERVICE  
5 COMMISSION ORDERS; ALLOWING ANY PERSON, INCLUDING A PERSON ELECTED OR APPOINTED TO  
6 A PUBLIC POSITION, TO CHALLENGE AN ORDER; ALLOWING A PERSON ALLEGING FRAUD OR A  
7 CONSTITUTIONAL VIOLATION TO CHALLENGE A COMMISSION ACTION WITHIN 2 YEARS AFTER  
8 DISCOVERY OF THE ALLEGED VIOLATION; AMENDING SECTIONS 2-4-702, 27-2-201, AND 69-3-402, MCA;  
9 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 2-4-702, MCA, is amended to read:

14 **"2-4-702. Initiating judicial review of contested cases.** (1) (a) A person who has exhausted all  
15 administrative remedies available within the agency and who is aggrieved by a final written decision in a  
16 contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of  
17 judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

18 (b) A party who proceeds before an agency under the terms of a particular statute may not be precluded  
19 from questioning the validity of that statute on judicial review, but the party may not raise any other question not  
20 raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure  
21 to raise the question before the agency.

22 (2) (a) Except as provided in ~~subsection~~ subsections (2)(c) and (2)(e), proceedings for review must be  
23 instituted by filing a petition in district court within 30 days after service of the final written decision of the agency  
24 or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided  
25 by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner  
26 resides or has the petitioner's principal place of business or where the agency maintains its principal office.  
27 Copies of the petition must be promptly served upon the agency and all parties of record.

28 (b) The petition must include a concise statement of the facts upon which jurisdiction and venue are  
29 based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in  
30 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which

1 the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

2 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather  
3 than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in  
4 the same manner as the provisions of this part apply to the district court.

5 (d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title  
6 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be  
7 located or where the action is proposed to occur.

8 (e) If a petition for review is filed pursuant to 69-3-402(2), proceedings for review must be instituted by  
9 filing a petition in district court within 2 years after discovery of the alleged violation.

10 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the  
11 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers  
12 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice  
13 only if the provisions of 27-19-315 through 27-19-317 are met.

14 (4) Within 30 days after the service of the petition or within further time allowed by the court, the agency  
15 shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under  
16 review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably  
17 refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may  
18 require or permit subsequent corrections or additions to the record."

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20 **Section 2.** Section 27-2-201, MCA, is amended to read:

21 **"27-2-201. Actions upon judgments.** (1) Except as provided in subsections (3) through ~~(5)~~ (6), the  
22 period prescribed for the commencement of an action upon a judgment or decree of any court of record of the  
23 United States or of any state within the United States is within 10 years.

24 (2) The period prescribed for the commencement of an action upon a judgment or decree rendered in  
25 a court not of record is within 10 years. The cause of action is considered, in that case, to have accrued when  
26 final judgment was rendered.

27 (3) The period prescribed for the commencement of an action to collect past-due child support ~~that has~~  
28 ~~accrued after October 1, 1993~~, under an order entered by a court of record or administrative authority is within  
29 10 years of the termination of support obligation or within 10 years from entry of a lump-sum judgment or order  
30 for support arrears, whichever is later.

1 (4) The period prescribed for the commencement of an action to collect past-due child support that has  
 2 accrued under a support order issued in another state, in a foreign country, or in a tribal court is as provided in  
 3 subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer.

4 (5) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record may be  
 5 commenced at any time within the offender's lifetime during which restitution remains unpaid.

6 (6) An action under 69-3-402(2) for alleged constitutional violations or allegations of fraud against the  
 7 public service commission may be commenced at any time within 2 years after discovery of the alleged violation."

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9 **Section 3.** Section 69-3-402, MCA, is amended to read:

10 **"69-3-402. Action to challenge commission order.** (1) ~~Any~~ Except as provided in subsection (2), a  
 11 party in interest or a person, including a person elected or appointed to a public position, being dissatisfied with  
 12 an order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing any  
 13 regulation, practice, or service may, within 30 days, commence an action in the district court of the proper county  
 14 against the commission and other interested parties as defendants to vacate and set aside ~~any such~~ the order  
 15 on the ground that the rate, fare, charge, classification, or joint rate fixed in ~~such~~ the order is unlawful or  
 16 unreasonable or that ~~any such~~ the regulation, practice, or service fixed in ~~such~~ the order is unlawful or  
 17 unreasonable.

18 (2) For alleged constitutional violations or allegations of fraud, a party of interest or a person, including  
 19 a person elected or appointed to a public position, may challenge a commission order pursuant to subsection (1)  
 20 within 2 years after discovery of the alleged violation.

21 ~~(2)(3)~~ (3) The commission and other parties ~~defendant~~ defending the action shall file ~~their~~ an answer to ~~said~~  
 22 the complaint within 20 days after the service ~~thereof~~ of the complaint, ~~whereupon such and the~~ action shall must  
 23 be ~~at issue and stand~~ ready for hearing upon within 20 days' notice to either party.

24 ~~(3)(4)~~ (4) All actions brought under this part ~~shall~~ must have precedence over any civil cause of a different  
 25 nature pending in ~~such~~ the court, ~~and the court shall always be deemed open for the hearing thereof.~~

26 ~~(4)(5)~~ (5) In all actions under this part, the burden of proof ~~shall be upon~~ is on the party attacking or resisting  
 27 the order of the commission to show that the order is unlawful or unreasonable, ~~as the case may be."~~

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29 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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